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Intergovernmental Group of Experts on Competition Law and Policy

DIRECTORY OF COMPETITION AUTHORITIES

Prepared by the UNCTAD secretariat

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INTRODUCTION

1. At its third session, held from 2 to 4 July 2001, the Intergovernmental Group of Experts on Competition Law and Policy requested the UNCTAD secretariat to continue to publish an updated version of the Directory of Competition Authorities (Agreed Conclusions, para. 8(b), in document TD/B/COM.2/32 - TD/B/COM.2/CLP/24).

2. Accordingly, the present document contains a revised version of the Directory of Competition Authorities, which could be used to facilitate contacts between officials responsible for the control of restrictive business practices in the performance of their duties.

3. Should national competition authorities wish to further update information contained in this document, the UNCTAD secretariat would be grateful if they would provide their full names, addresses, telephone and fax numbers, electronic mail address and website.

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Commission on Investment, Technology and
Related Financial Issues
Intergovernmental Group of Experts on Competition Law and Policy
Fourth session
Geneva, 3–5 July 2002

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Provisional agenda and annotations

I. PROVISIONAL AGENDA

1. Election of officers

2. Adoption of the agenda and organization of work

3. (i) Consultations on competition law and policy, including the Model Law and studies related to the provisions of the Set of Principles and Rules

   (ii) Work programme, including technical assistance, advisory and training programmes on competition law and policy

3. Provisional agenda for the fifth session of the Intergovernmental Group of Experts

5. Adoption of the report of the Intergovernmental Group of Experts

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II. ANNOTATIONS

Item 1. Election of officers

1. The Intergovernmental Group of Experts will elect a Chairman and Vice-Chairman-cum-Rapporteur.

Item 2. Adoption of the agenda and organization of work

2. The Group of Experts may wish to adopt the provisional agenda, which is the same as those for previous sessions of the Intergovernmental Group of Experts and which has always been found suitable for the effective discharge of the Group's duties.

Organization of work

3. It is proposed that the first plenary meeting, which will open at 10 a.m. on Wednesday, 3 July 2002, be devoted to procedural matters (items 1 and 2 of the provisional agenda) and to introductory statements. The closing plenary meeting, on Friday 5 July, will be devoted to the adoption of the report (item 5). [1]

4. This would leave the remaining meetings, from the afternoon of 3 July to the morning of 5 July inclusive, for consultations on competition law and policy, including studies related to the provisions of the Set of Principles and Rules (item 3 (i) of the provisional agenda) and the work programme, including technical assistance, advisory and training programmes on competition law and policy (item 3 (ii)). If more time is needed, the adoption of the report could be postponed to the late afternoon of 5 July, in order for an informal working session to take place that afternoon.

Item 3 (i). Consultations on competition law and policy, including the Model Law and studies related to the provisions of the Set of Principles and Rules.

5. As recommended in paragraph 5 of the agreed conclusions of the Intergovernmental Group of Experts on Competition Law and Policy at its third session,[2] at its fourth session the Intergovernmental Group of Experts will consider the following issues, for better implementation of the Set:

(a) Merger control: the balance between control of concentration and the ability of domestic firms to compete on world markets;
(b) The interface between competition authorities and regulatory bodies.

6. Should countries wish to hold consultations on additional subjects, they are requested to inform the secretariat well in advance (no later than 15 May 2002) in order for all participants to be able to prepare themselves for such consultations. Moreover, for each of the issues referred to above, the secretariat would encourage experts from both developed and

developing countries, as well as countries in transition, to make oral presentations supported by short written contributions to be made available during the consultations.

7. Under paragraph 4 of the agreed conclusions of the third session, the Group of Experts requested the secretariat to revise documents TD/B/COM.2/CLP/20,21,22 and 23 in the light of comments made by member States at the third session or to be sent in writing by 31 January 2002 for submission to the next session of the Group of Experts and to make them available through UNCTAD's website. Also, in paragraph 3 of the agreed conclusions, the Group of Experts requested the secretariat to study for the 2002 session of the Group of Experts the possibility of formulating a model competition agreement on competition law and policy, based on the Set of Principles and Rules on Competition. This will be contained in the conclusions of the revised study on "Experiences gained so far on international cooperation on competition policy issues and the mechanisms used" (TD/B/COM.2/CLP/21/Rev.1). Further work on this issue will be taken up at an ad hoc meeting of experts convened by the secretariat to study the main issues to be covered by a possible international competition cooperation agreement. The results of that meeting will be submitted to the Group of Experts in July.

8. Further, as requested above, the revised versions of documents TD/B/COM.2/CLP/22 and TD/B/COM.2/CLP/23, on "Competition policy and the exercise of intellectual property rights" and "Model law: The relationships between a competition authority and regulatory bodies, including sectoral regulators", and the new chapter of the model law will be submitted to the Group of Experts for consideration. An updated review of technical assistance (TD/B/COM.2/CLP/29) will also be submitted under agenda sub-item 3(ii), referred to below.

9. As requested under paragraph 7 of the agreed conclusions, the fourth session of the Intergovernmental Group of Experts will also consider the secretariat's ongoing work on:

(a) A study on the relationship between competition, competitiveness, and development;

(b) A progress report on a study of the roles of possible dispute mediation mechanisms and alternative arrangements, including voluntary peer reviews, in competition law and policies, as well as a preliminary report on ways in which possible international agreements on competition might apply to developing countries, including through preferential or differential treatment, with a view to enabling them to introduce and enforce competition law and policy.

10. Finally, as requested under paragraph 8 of the agreed conclusions, the secretariat continued to publish the following documents on a regular basis and to make them available on the Internet:

(a) Further issues of the Handbook on Competition Legislation containing the laws and commentaries of New Zealand, Thailand and Indonesia (published as document TD/B/COM.2/CLP/25);

(b) An updated version of the Directory of Competition Authorities (published as TD/B/COM.2/CLP/27); and

(c) An information note on recent important competition cases, with special reference to cases involving more than one country, being published separately as document TD/B/COM.2/CLP/26.

11. These three documents, being non-sessional as far as the Intergovernmental Group of Experts is concerned, might not all be available in due time for the session, but will be included in the UNCTAD website like all other documents requested by the Intergovernmental Group of Experts.

Item 3 (ii). Work programme, including technical assistance, advisory and training programmes on competition law and policy

12. Under this item, the Intergovernmental Group of Experts is expected to give guidance to the UNCTAD secretariat as to further work to be undertaken on competition law and policy.

13. In particular, the experts will have before them an updated review of technical assistance (TD/B/COM.2/CLP/29), taking into account the information submitted by States and international organizations, as requested in paragraph 4 of the agreed conclusions. Moreover, it should be noted that in paragraph 24 of the Doha Declaration, the WTO ministers called on "other relevant intergovernmental organizations, including UNCTAD", to provide strengthened and adequately resourced assistance to respond to technical assistance and capacity building needs. Accordingly UNCTAD, in cooperation with the WTO, is actively involved in a series of post-Doha technical cooperation activities aimed at preparing developing countries and countries in transition for possible negotiations on a multilateral competition framework at the WTO. Details of these and other technical assistance activities of UNCTAD are indicated in UNCTAD's competition website: http://www.unctad.org/competition.

14. On the basis of the review of technical cooperation, the experts will be invited to give guidance to the secretariat on how best to assist developing countries in formulating national competition legislation and regional competition rules and in building and strengthening capacities in this field, as well as how best to identify financial and technical resources for the implementation of technical assistance and capacity building programmes.

Item 4. Provisional agenda for the fifth session of the Intergovernmental Group of Experts

15. As is customary, the Intergovernmental Group of Experts is expected to agree on the provisional agenda for its next session.

Item 5. Adoption of the report of the Intergovernmental Group of Experts

16. The Intergovernmental Group of Experts on Competition Law and Policy is required to report to the Commission on Investment, Technology and Related Financial issues

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[1] In view of the short duration of the session, the Rapporteur would be authorized to complete the final report after the close of the session.

[2] See report of the Intergovernmental Group of Experts on Competition Law and Policy on its third session (TD/B/COM.2/32-TD/B/COM.2/CLP/24), chapter I, page 5.

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Commission on Investment, Technology
and Related Financial Issues
Intergovernmental Group of Experts on
Competition Law and Policy
Fourth session
Geneva, 3-5 July 2002

REVIEW OF TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON COMPETITION LAW AND POLICY

Note by the UNCTAD secretariat

Executive summary

UNCTAD provides various types of technical assistance and advisory and training programmes on competition law and policy to developing countries and countries in transition in accordance with requests received, the needs of countries concerned and the resources available. This document includes a progress report on the technical cooperation activities of the UNCTAD secretariat. These activities are divided into three categories - national activities, regional and subregional activities and participation in seminars and conferences - each of which is discussed in a separate section. The document also contains extracts from replies by member States and international organizations to the note by the Secretary-General of UNCTAD requesting information on technical cooperation activities provided, planned or received, bilaterally or multilaterally, in the area of competition law and policy. Extracts from replies identifying specific competition law and policy areas or issues which the respective States or international organizations would like to receive special attention are presented in a separate subsection.

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Introduction

1. Section F, paragraphs 6 and 7, of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the United Nations General Assembly in 1980 (TD/RBP/CONF.10/Rev.2) calls for technical assistance and advisory and training programmes on restrictive business practices, particularly for developing countries. The Fourth United Nations Conference to Review All Aspects of the Set, in paragraph 14 of its resolution (TD/RBP/CONF.5/16), noted with appreciation the voluntary financial and other contributions for capacity-building and technical cooperation; invited all member States to assist UNCTAD on a voluntary basis in its technical cooperation by providing experts, training facilities and resources; requested the UNCTAD secretariat to continue and, resources permitting, expand its technical cooperation activities; and invited the Secretary-General of UNCTAD to explore the feasibility of mobilizing financial and human resources on a more predictable and regular basis and to address the cooperation needs of developing countries and economies in transition in relevant official languages of the United Nations.

2. Subsequently, in the agreed conclusions of its third session, the Intergovernmental Group of Experts on Competition Law and Policy (July 2001) noted with appreciation the voluntary financial and other contributions received from member States; invited all member States to assist UNCTAD on a voluntary basis in its technical cooperation activities by providing experts, training facilities or financial resources; and requested the UNCTAD secretariat to pursue and, where possible, expand its technical cooperation activities within the scope of available resources, taking into account the deliberations and consultations that took place at that session. It further requested the UNCTAD secretariat to prepare for consideration by the next session of the Intergovernmental Group of Experts an updated review of technical assistance, taking into account the information to be submitted by member States and international organizations no later than 31 January 2002 (TD/B/COM.2/32-TD/B/COM.2/CLP/24).

3. Accordingly, this note contains information on the technical cooperation activities of the UNCTAD secretariat in 2001, as well as extracts from replies of member States and international organizations to the note by the Secretary-General of UNCTAD requesting information on technical cooperation activities in the field of competition law and policy (TDN 915 (1) of 19 November 2001). The Secretary-General is grateful for the replies to his note.

I. PROGRESS REPORT ON UNCTAD TECHNICAL COOPERATION

4. UNCTAD provides assistance and advisory and training programmes on competition law and policy to developing countries and countries in transition in accordance with requests received and resources available. The main types of requests for technical assistance received by UNCTAD are as follows:

(a) States without any competition legislation may request information about restrictive business practices, including their existence in and possible adverse effects on their economy. This may involve a study of the restrictive business practices (RBPs) in their economy;

(b) States without competition legislation may request introductory seminars directed at an audience including government officials and academics as well as business and consumer-oriented circles;

(c) States which are in the process of drafting competition legislation may request information on such legislation in other countries and may seek advice about drafting their competition legislation;

(d) States which have just adopted competition legislation may seek advisory services for setting up the competition authority. These services usually include training of officials responsible for the actual control of RBPs and may involve training workshops and/or on-the-job training with competition authorities in countries having experience in the field of competition;

(e) States which have already adopted competition legislation and have experience in the control of RBPs may wish to consult one another on specific cases and to exchange information. Seminars may be organized for such exchanges between competition authorities;

(f) States wishing to revise their competition legislation might seek expert advice from competition authorities in other States so as to amend their laws in the most effective manner possible.

5. The main technical cooperation activities of the UNCTAD secretariat in 2001 are described below.

A. National activities

6. In the area of preparation or revision of national competition policies and legislation, UNCTAD provided assistance to Angola, Botswana, China, Cuba, Ecuador, Hong Kong (China), Kenya, Lesotho, Namibia, Swaziland, Thailand and Viet Nam. Also, a manual (in Russian) on international competition law, regulation and cooperation was published for distribution in Commonwealth of Independent States (CIS) countries. Moreover, a number of national seminars organized by UNCTAD contributed to capacity-building in the promotion of competition culture.

7. A national seminar on competition law and policy was held by UNCTAD in cooperation with the Government of Cuba in Havana in February 2001. The seminar was the first step to furthering assistance to Cuba in the area of competition policy, as such assistance is envisaged by a special UNCTAD project aimed at strengthening the capacity of Cuban public institutions to foster Cuba's economic growth and its insertion into the world economy.

8. Three seminars were organized by UNCTAD and the Ministry of Trade of Ecuador in Quito and Guayaquil in April 2001 to discuss the problems of drafting and enforcing competition legislation, as well as to advocate the benefits and importance of adopting competition law and policy for the national economy and in relation to Ecuador's involvement in various international integration processes.

9. Three workshops were organized by UNCTAD, UNDP and the Ministry of Trade of Viet Nam in May, June and November 2001 in Hanoi and Ho Chi Minh City. Their goal was to assist the Government of Viet Nam in drafting national competition legislation, and they brought together participants from the Government, public and private sectors of Viet Nam.

10. A workshop within the framework of drafting competition legislation for Botswana was held in October 2001 in Gaborone. Participants reviewed interim reports in preparation for the elaboration of the competition law and policy of the country, and they discussed all major competition-related issues.

11. A workshop was held in November 2001 in Manzini, Swaziland, to discuss the country's draft competition law and institutional framework with a wide range of participants, including government officials, representatives of the business community and consumers. The workshop also discussed the problems of establishing an effective competition authority for the control and implementation of the competition law once it is approved in the country.

12. A seminar on the policies and practices of cross-border mergers and acquisitions was organized by UNCTAD in cooperation with China's Ministry of Foreign Trade and Economic Co-operation in Guangzhou in December 2001. The seminar reviewed key issues related to cross-border mergers and acquisitions and focused on lessons from international experience that seemed relevant for national authorities.

13. A workshop titled "Making Markets Work - The Role of Government in Promoting Competition" was organized by UNCTAD and the Consumer Council in Hong Kong, China, in December 2001. It provided relevant government officials with capacity-building in competition policy analysis and assisted them in examining allegations of anti-competitive conduct and evaluating the impact of new economic policy proposals on market competition.

14. A seminar entitled "La Politique de la concurrence de Madagascar dans le cadre de la globalisation" was held by UNCTAD and the Malagasy Government in Antananarivo, Madagascar, in December 2001. By contributing to the promotion of competition culture in the country and educating interested segments of society, the seminar facilitated the possible adoption of national competition legislation, regarding which UNCTAD had earlier provided advice.

B. Regional and subregional activities

15. Together with assisting in the preparation and drafting of competition legislation by member States of UEMOA (West African Economic and Monetary Union), UNCTAD organized a number of seminars, workshops and conferences which contributed to capacity-building for regional and multilateral cooperation in the area of competition and consumer protection.

16. In Asia, in cooperation with the Consumer Unity and Trust Society (CUTS) of India and Consumers International (Asia), UNCTAD held an Asian-Pacific regional meeting titled "New Dimensions of Consumer Protection in the Era of Globalization" (Goa, India, 10-11 September 2001). The meeting brought together representatives of consumer non-governmental organizations (NGOs) and government officials from countries of the region

to discuss various issues related to consumer interests, competition, competitiveness and development in developing countries. It also adopted a list of recommendations known as "The Goa Declaration for the Expert Meeting on Consumer Interests, Competitiveness, Competition and Development" (Geneva, 17-19 October 2001). Also in India, an interregional Intensive Training Session for Negotiators of Investment and Competition Agreements was organized by UNCTAD and the Institute for Foreign Trade in New Delhi on 19-30 November 2001.

17. In Africa, a Regional Seminar on Competition Policy and Law was organized on 26-30 March 2001 in Mombasa, Kenya, by UNCTAD in partnership with the Kenyan Monopolies and Prices Commission. Representatives of competition authorities of all COMESA, EAC and SADC member States as well as other participants attended the seminar, which aimed at institutional capacity-building for the Kenyan Competition Authority and other regional competition agencies. Participants also exchanged knowledge in the field of drafting and adopting competition law and policy and shared experiences in dealing with various cases.

18. Another African Regional Seminar on the Interaction between Consumer Policy, Competition Policy, Competitiveness and Development was organized by UNCTAD and Consumers International Regional Office for Africa on 21-22 August 2001 in Accra, Ghana. The seminar brought together leaders in consumer policy from African Governments, business and civil society to reflect on Africa-specific issues, to exchange concrete experiences and practical approaches to address the issue of consumer protection in developing countries and to formulate recommendations for the Geneva Expert Group meeting.

19. Within the framework of a regional TrainForTrade project, a first experiment in distance training in competition law and policy was held for Benin, Burkina Faso and Mali from 13 November to 4 December 2001. This activity, which integrated two courses - on formulation and implementation of competition law and policy - was organized to train high-level officials from the above-mentioned countries.

20. In Latin America, a Regional Seminar on Consumer Protection and Competition Policy for Latin America and the Caribbean was organized on 23-25 July 2001 in Cartagena, Colombia, by UNCTAD in cooperation with the Superintendencia de Industria y Comercio of Colombia. The seminar was attended by a wide range of participants from different countries of the region, who showed strong interest in the issues discussed, especially the broader approach to competition, competitiveness and development in relation to consumer policy. The seminar adopted recommendations containing a number of interesting proposals which were submitted and further discussed at the Geneva Expert Group meeting.

21. In cooperation with the State Committee on Antimonopoly Policy of Kyrgyzstan, UNCTAD also organized the International Conference on Competition Policy for Countries in Transition in Bishkek on 1-2 October 2001. The Conference reviewed new developments in competition legislation in light of economic reforms under way in transitional economies and discussed methods and practices of regulating natural monopolies. It also discussed various issues relating to consumer protection and international cooperation in the area of competition and consumer protection and elaborated its recommendations for the Geneva Expert Group meeting.

C. Participation in seminars and conferences

22. In 2001, staff members of UNCTAD took part in a number of seminars, workshops and conferences related to issues of competition law and policy and consumer protection. In particular, resource persons from UNCTAD made substantive presentations and/or participated in discussions at the following meetings:

(a) The Third International Meeting of Economists on Globalization and Development, organized by the Association of Economists of Latin America and the Caribbean and the Cuban National Association of Economists and Accountants in Havana in January-February 2001;

(b) Cours de pratique juridique de l'entreprise et de l'investissement, held by the International Development Law Institute in February 2001 in Rome;

(c) The seminar "New Issues in WTO: Investment, Competition, Environment and Trade Facilitation", organized by Global Conferences, the South African Department of Trade and Industry and the European Commission in Cape Town in February 2001;

(d) In OECD meetings: Working Party No. 3 on International Cooperation, meetings of the Committee on Competition Law and Policy and the Global Competition Forum (Paris, February, May and October 2001);

(e) A WTO regional workshop "Competition Policy, Economic Development and Multilateral Trading System: Overview of the Issues and Options for the Future", held by the WTO in cooperation with the Government of South Africa and the Department for International Development of the United Kingdom in Cape Town in February 2001;

(f) The Asia-Pacific Economic Cooperation Forum (APEC)/Partners for Progress (PPF) Course on Competition Policy for APEC member economies, jointly organized by the Governments of Japan and Thailand and held in March 2001 in Bangkok;

(g) A training course on international trade for the officers of Vietnamese agencies, organized by the Italian Trade Commission in Hanoi in April 2001;

(h) A conference on "Competition Policy in Infrastructure Services", organized by the Inter-American Development Bank and the Multilateral Investment Bank in Washington in April 2001;

(i) A seminar on "Trade and Competition" held in June 2001 in London by the Consumers' Association of the United Kingdom;

(j) The Sixth International Workshop on Competition Policy, organized by the OECD and Korea Fair Trade Commission in July-August 2001 in Seoul;

(k) A course on Antimonopoly and Competition Policy, organized by the JICA and the Fair Trade Commission of Japan in Osaka in September 2001;

(l) A meeting for a "7-Up" Consumer Unity and Trust Society (CUTS) project on a comparative study of competition regimes in selected developing countries of the Commonwealth in Goa, India, in September 2001;

(m) A seminar of the International Cooperation Programme on Competition Policy, "Building a Competition Culture", held in cooperation with the OECD and the Fair Trade Commission of Taiwan Province of China in Phuket, Thailand, in November 2001;

(n) The COMESA Regional Conference on Competition Law and Policy held in November 2001 in Kampala, Uganda.

II. INFORMATION ON TECHNICAL COOPERATION BY MEMBER STATES AND INTERNATIONAL ORGANIZATIONS

A. Technical assistance provided, planned or received

23. This subsection provides a summary of the replies received to the Secretary-General's note TDN 915 (1) of 19 November 2001, which requested information on technical cooperation activities in the area of competition law and policy.

Belgium

24. A delegation from China and one from the Republic of Korea paid a visit to the Prices and Competition Division of the Trade Policy Department of the Ministry of Economic Affairs within the framework of technical cooperation activities.

Burkina Faso

25. Burkina Faso receives technical assistance under the TrainForTrade programme for strengthening training capacities in the field of international trade. A distance training seminar on the implementation of competition law was held for this purpose from 13 November to 4 December 2001.

Colombia

26. With regard to technical cooperation provided by the relevant international organizations, the Department of Trade and Industry (Superintendencia de Industria y Comercio) has provided the following information:

(a) With the support of UNCTAD, the Department organized the Regional Seminar on Consumer Protection, Competition, Competitiveness and Development in Cartagena de Indias in July 2001. The following issues were discussed at the meeting: (i) the interface between consumer protection, competition policy and development; (ii) consumer protection policy, competitiveness and governance; (iii) how to make globalization work more for the benefit of developing countries; and (iv) future consumer issues and recommendations for the expert group on consumer protection, competitiveness, competition and development;

(b) The World Bank granted the Department a loan to: (i) increase institutional knowledge of the law, by training officials in the different subjects they need to know about for their work; (ii) develop a manual on legal procedures for investigating restrictive trade practices and unfair competition; (iii) develop infrastructure in the form of a competition library and restructured archives; (iv) establish an infrastructure for monitoring information on matters relating to anti-competitive agreements; and (v) hire consultants to provide back-up in investigations into mergers and restrictive trade practices.

Costa Rica

27. In 2001-2002, the Commission for the Promotion of Competition carried out the following international technical cooperation activities:

(a) Mexico: project on institutional support for the Costa Rican Commission for the Promotion of Competition and the Mexican Federal Competition Commission in the competition process. The two countries agreed to implement this initiative, which dates from March 2000, in two stages. The second stage, in which training will be provided for officials from the Technical Support Unit of the Mexican Federal Competition Commission, is due to be implemented in 2002;

(b) Chile: (i) the international technical cooperation project on strengthening competition, with the participation of the Chilean National Economic Inspectorate, the Costa Rican Commission for the Promotion of Competition and the Pontifical Catholic University of Chile. The project was designed to be implemented in two stages: the first was implemented between October and November 2001 and the second is due to be implemented in 2002; (ii) the inter-agency agreement between the Chilean National Economic Inspectorate and the Costa Rican Commission for the Promotion of Competition;

(c) United States: two officials from the Federal Trade Commission provide training for officials of the Technical Support Unit of the Commission for the Promotion of Competition;

(d) Canada: technical cooperation agreement to provide in-service training courses and seminars jointly with the Canadian agency within the framework of the negotiations on the Free Trade Area of the Americas;

(e) Nicaragua: the Nicaraguan Ministry of Development, Industry and Trade requested in-service training courses for officials in order to upgrade their skills and pass on experience in the enforcement of the Promotion of Competition and Effective Consumer Protection Act;

(f) Uruguay: the Commission for the Promotion of Competition was requested to train two officials from the Government of Uruguay.

Croatia

28. The Agency for the Protection of Market Competition (APMC) provided technical assistance mainly in the form of direct consultancy (provision of guidelines for drafting national competition legislation, organization of work, exchange of experiences, etc.) to the following countries and international organizations:

(a) The former Yugoslav Republic of Macedonia (Ministry of Trade): (i) Consultative meetings were held in Zagreb (in spring 2000) and in Ohrid (as part of the international seminar "Different Stages in the Competition Policy Development of the Countries in the Region", organized by the German Foundation for International Legal Co-operation and the Stability Pact in October 2000); (ii) guidelines were provided for drafting Macedonia's national competition legislation, and assistance was provided in other activities;

(b) Albania: assistance included organizing a meeting in Zagreb with the Albanian delegation, exchange of experiences on drafting and implementation of Croatian competition legislation and organization of the work of the APMC;

(c) The European Bank for Reconstruction and Development (EBRD): the AMPC prepared two Competition Policy Surveys (statistics) in 1999 and 2000;

(d) The World Bank: the APMC prepared a Competition Policy Survey (statistics and other information) in March 2001.

29. The APMC also received technical assistance, mainly in the form of consultancy (direct visits, working meetings and participation in international seminars) from the following national competition authorities and States:

(a) IRZ Stiftung (Berlin): provided consultancy assistance in drafting new Croatian competition legislation and in its harmonization with EC legislation as well as assistance in the form of working visits and meetings;

(b) The OECD: (i) the APMC representatives participated in international seminars on competition policy organized by the OECD for non-member countries in Vienna (annual two-week seminar); (ii) the agency's representatives also participated in international three-day seminars on the improvement of national legislation which are based on the Regional Initiative for Competition Law and Policy in South-East Europe, within the Investment Letter of the Stability Pact. These seminars were organized by the national competition authorities of the countries of the region (4-6 seminars per year to be organized during the period 2001-2006);

(c) The United States and Hungary: APMC representatives participated in an international competition policy seminar (exchange of experiences, consultancy) organized by the United States and Hungarian competition authorities in Budapest;

(d) Turkey: APMC participated in an international competition policy seminar organized by the Turkish International Co-operation Agency (TICA) and the Turkish Competition Authority in Istanbul.

Germany

30. In 2001 the Bundeskartellamt (Federal Cartel Office - FCO) provided technical assistance to Hungary and Romania and participated in international seminars/workshops in Indonesia (seminar in Jakarta), Austria (case study seminar for 20 countries in transition, in Vienna), Viet Nam (two workshops in Hanoi and Ho Chi Minh City), Pakistan (seminar in Islamabad), China (symposium and seminar in Haikou), Estonia (seminar for four countries of the Baltic region in Tallinn) and Kenya (regional training seminar in Mombasa). Also in May 2001, the FCO organized its Tenth International Conference on Competition in Berlin. At this meeting, which has been a tradition since 1982 and was attended by nearly 300 competition experts from more than 50 countries as well as high-ranking representatives from the political, industrial and academic spheres, current problems of competition policy and law were discussed. The topic of last year's conference was "Competition in the New Economy - The Internet, the New Driving Force".

Iran

31. A seminar on competition law and policy was organized by UNCTAD in Iran in May 1998 with the participation of representatives of the public and private sectors of this country.

Israel

32. The Israel Antitrust Authority (IAA) has limited experience in the field of technical assistance, most of it gained from short internships by its employees at foreign competition agencies and a private consulting firm. In autumn 2000, IAA sent four employees for a two-month internship with the United States federal antitrust agencies. During the internship, these employees developed comprehensive familiarity with the experience, jurisprudence and personnel of the United States agencies. Based on the internship experience, the employees drafted and circulated extensive documents summarizing what they had learned about the approaches and experience of the United States agencies in specific industries and cases. These documents have proved extremely useful for IAA's work because they provide case handlers with insights into various competition considerations that arise in the course of their work. Furthermore, the internships were helpful because they allowed the IAA to observe the detailed structure of the United States agencies and to establish personal connections with their staff, both of which will facilitate future cooperation between the agencies.

Jamaica

33. Jamaica's Fair Trade Commission has not benefited from much technical assistance from any States or international agencies, as far as competition law and policy is concerned. It has been called upon, however, to share technical knowledge with a few States through lecture presentations.

Japan

34. The Japan Fair Trade Commission (JFTC) has been offering a wide variety of technical assistance programmes in order to raise awareness of the significance of developing, implementing and enforcing effective competitive practices, and it shares its experiences in this field. Programmes include short-term three-to-five-day seminars and workshops, longer (e.g. one-month) training courses and in-depth technical assistance for some developing countries achieved by sending JFTC experts to help locally for one to two years. The JFTC programmes are designed for competition policy experts from developing or transitional countries, in particular Asian developing countries. Among its longer training courses, the JFTC in cooperation with the Japan International Cooperation Agency (JICA) has since 1994 conducted a course on antimonopoly acts and competition policy with a view to providing a general understanding of Japan's Antimonopoly Act and its economic policy in comparison with that of participants' countries. Analysis of Japan's experience in this area contributes to effective enforcement of antimonopoly legislation and to the encouragement of competition culture in the participating countries. About 10 participants from competition or competition-related authorities took part in each one-month training course. In addition, since 1998, the JFTC has conducted another yearly training course for the Chinese authorities aimed at contributing to the drafting of a new comprehensive competition law in China. The JFTC has also offered training courses for the Russian competition agency.

35. The JFTC and Thailand, in cooperation with other member economies, have organized a training programme in the field of competition policy every year since 1996 within the framework of APEC/PFP. The programme aims to assist in the capacity-building of mid- or higher-level experts from member economies, in particular developing member economies, by providing a variety of courses in the area of competition policy (both lectures and case studies) as well as general courses and some specialized courses. About 50 participants have attended the three-day programme every year. In addition, the JFTC, in cooperation with Thailand and Viet Nam is proposing to organize a new training programme within the framework of APEC. Also, the JFTC has been sending its experts to provide in-depth technical assistance on competition policy in Indonesia, Lithuania, Malaysia, Russia, Thailand and Viet Nam.

Lebanon

36. Within the scope of the USADD project at the Ministry of Economy and Trade, an expert was expected to provide, in January 2002, technical and legal assistance for drafting a modem competition law, designing Lebanon's competition policy, and assisting in establishing a competition regulator.

Madagascar

37. Technical assistance in the framework of international cooperation consisted of:

(a) The joint organization by UNCTAD and the Malagasy Government of a seminar on competition policy in Antananarivo, Madagascar, at the dawn of the new millennium, on 15-16 December 1999;

(b) The holding of a seminar on Malagasy competition policy and globalization in Antananarivo from 10 to 12 December.

Philippines

38. The Tariff Commission (TC) requested technical assistance and support from the Australian Agency for International Development (AUSAid) through the Philippine-Australia Governance Facility (PAGF) for the second phase of the study entitled "Developing a Comprehensive Competition Policy Framework for the Philippines". The project was approved in May 2000 and was undertaken by the Institute for Research and International Competitiveness (IRIC) in Australia. Phase 2 of the study dealt with the implementation of competition law in the Philippines in selected industries and addressed implementation requirements in detail. The results of the study were subsequently presented to academia, the judiciary and legislative branches, other government institutions, business and industry and consumer groups at a seminar in August 2001. Also, in 2001, representatives of the Tariff Commission, together with other Philippine participants, took part in the following training activities:

(a) Study tour of key competition institutions under the auspices of the Government of Australia (Australia, August-September);

(b) Training course on computable general equilibrium (CGE) modelling at Monash University (Australia, January);

(c) Hands-on-training in CGE modelling, IRIC and Monash University of Australia (Manila, April);

(d) Fifth APEC/PFP course on Competition Policy for APEC member economies, under the auspices of the Governments of Japan and Thailand (Bangkok, March).

Romania

39. The Romanian Competition Council (RCC) received assistance from the European Commission and, together with the Competition Office, benefited from a project financed through the PHARE budget, to strengthen administrative capacity in the field of competition and State aid. The project began in July 2001 and the twinning partners are the German Federal Ministry of Finance and the Italian Competition Authority. The project has two components, competition policy and State aid policy, and its objectives consist of completing and adopting secondary legislation in the areas of competition and State aid according to the acquis communautaire, as well as training Romanian experts. Direct contacts with experts from the European Commission took the form of participation in a series of annual conferences on competition policy organized by DG Competition which allowed participants to exchange experiences and address various competition-related issues of mutual concern. The Council also benefited from technical assistance from the United States Government through the USAID that consists of long-term missions from the United States Federal Trade Commission and the United States Department of Justice. A special adviser from the United States Federal Trade Commission is assisting the RCC staff in dealing with competition cases. Within the OECD's multilateral assistance programme for Central and Eastern European countries, RCC experts

benefited from a series of seminars on various topics such as abuse of dominant position, vertical agreements, mergers, horizontal agreements, the interface between competition and economic regulation and demonopolization.

40. Romania is a member of the Stability Pact in South-Eastern Europe. The Investment Compact which has been proposed by international agencies and South East Europe Country Economic Teams envisages more than 20 Regional Flagships Initiatives (RFI). For competition issues, three thematic meetings were envisaged:

(a) A meeting on competition law and policy and on opening markets for competition (Bucharest, October 2001);

(b) A meeting on taking action against anti-competitive behaviour (Sofia, November 2001); and

(c) A meeting on build[illegible] institutions and laying a foundation for international cooperation (Belgrade, March 2002).

41. These meetings make possible better regional and bilateral cooperation between competition authorities. Each country presents its specific cases within the framework of reforming competition regulation, and the debates are very useful as countries in the region face many similar problems.

Samoa

42. Samoa recently ratified two regional agreements with a view to establishing free trading among member countries of the Pacific Forum. These agreements are the Pacific Island Countries Trade Agreement (PICTA, 2001) and the Pacific Agreement on Closer Economic Cooperation (PACER, 2001). Under these two agreements, all countries belonging to the free trade area will receive technical assistance in the form of trade facilitation and promotion, capacity-building, and structural adjustment programmes. Such assistance will be provided primarily by the Forum Secretariat under a cooperation programme to be approved in conjunction with the Parties of the agreements. Under these stipulations, Samoa as a Party is committed to the policies and internationally accepted practices of competition and free trading in the implementation of the objectives of the agreements.

Sweden

43. The Swedish Competition Authority has been engaged in technical assistance in several different ways. The Authority has noticed a steep rise in demand for technical assistance in recent years, especially from countries that have applied for membership in the European Union. The Authority has given priority to assistance to competition authorities in these countries, especially the countries around the Baltic Sea. The Authority is engaged in two extensive Cupertino projects involving the competition authorities in Poland and Lithuania, both within the framework of twinning projects of the European Union. In 2001 the Authority directed substantial resources to these projects. Experts from the Authority assisted the Polish and Lithuanian authorities in enforcement of competitive policies, and experts from those authorities

made study visits to the Swedish Competition Authority. The Authority also received study visits from colleagues in Estonia and took part in seminars in Latvia. The Swedish technical assistance has focused particularly on enforcing competition legislation and promoting competition-oriented attitudes in society. The Authority also took part in technical assistance in the form of seminars arranged by the OECD in Moscow and Tallinn. Bilateral technical assistance was also provided - for example, the Authority received visits from delegations from China and Albania, among others.

44. With reference to previous Swedish replies to requests for information on technical assistance, the present reply stated that some countries, in particular those making the transition to a market economy, seem to need assistance in implementing competition policy and legislation in the competition authorities and in the administration as a whole. In other countries with more experience of competition policy, there seems to be a need for the practical training of competition authorities in competition law enforcement. The specific competition problems related to deregulation in infrastructure sectors are another high-priority area. There is also a need for help with market access issues and with the relationship between competition policy and trade policy, probably as a result of the ongoing work within the WTO. More resources could be made available through increased efficiency, which could be achieved through careful planning and the exchange of information between various parties (national authorities and international organizations) responsible for similar or related technical assistance projects. The initiative of the UNCTAD secretariat in this regard is very welcome.

Tunisia

45. Since the law on competition and prices took effect, Tunisia has had the benefit of a full range of technical assistance programmes. Cooperation has been expanded since the Tunisian Competition Council was founded. The Council's cooperation with the French Competition Council and the French General Directorate for Fair Trading, Consumer Affairs and Fraud Control (DGCCRF) has taken the following forms:

(a) An annual cooperation programme involving Council officials, which has been drawn up by the two parties since 1997. The programme includes workshops on competition designed to familiarize officials with the working methods used in inquiries and investigations;

(b) Visits to Tunisia by the Chairperson of the French Competition Council and the Director-General of DGCCRF, during which they attend round tables and contribute to work on competition.

46. DGCCRF assistance is part of a cooperation programme focused on legislative drafting and professional training:

(a) Assistance in drafting the Tunisian law on competition and prices;

(b) Staff training, including training of investigators working for the competition authorities, and the organization of seminars, courses and workshops on specific technical issues for limited numbers of staff.

47. UNCTAD has provided Tunisia with technical assistance related to:

(a) The holding of regional seminars to promote a competition culture and to encourage the exchange of ideas and information on restrictive trade practices and anti-competitive practices between countries in the same region;

(b) Investigations and studies: in 1998, UNCTAD carried out two studies on competition matters for Tunisia.

Viet Nam

48. Viet Nam is in the process of drafting its competition law. The draft is expected to be completed and submitted to the National Assembly for approval by 2004. During the drafting process, international cooperation and assistance have been playing a very important role. In 2001, Viet Nam received effective cooperation and assistance from other countries and international organizations, specifically as follows:

(a) The Ministry of Trade together with UNDP (Hanoi) and UNCTAD implemented a project on building the capacity and institutions needed for competition law and policy. The project's main activities included the collection and translation of documents relating to competition law and policy as well as the organization of three international workshops on competition law and policy with the participation of experts from other countries and international organizations;

(b) The Ministry of Trade also received technical assistance from other countries such as Canada, France, Korea and Taiwan Province of China and international organizations such as OECD and APEC, which sponsored the participation of Vietnamese officials in international workshops;

(c) In September 2001, UNDP (Hanoi) invited the competition law drafting committee of Viet Nam to participate in and make a presentation at the meeting of donors to Viet Nam.

Latin American Integration Association

49. The Deputy Secretary-General of the Latin American Integration Association (ALADI) expressed his appreciation for the important work carried out by UNCTAD in its technical assistance, advisory and training programme on competition law and policy. He also drew attention again to the request by ALADI, mentioned in a note to UNCTAD (ALADI/SGA-PRO 380/01), that at its next session, to be held from 3 to 5 July 2002, the ALADI Inter-agency Group should consider a proposal to undertake a programme to deal with the issue of competition policy within the framework of progress made by ALADI towards Latin American integration.

West African Economic and Monetary Union

50. The Commission of the West African Economic and Monetary Union (UEMOA) welcomed European Union support in funding preparatory studies for the drafting of community competition laws.

World Trade Organization

51. Paragraph 22 of the Singapore Ministerial Declaration directed that the technical cooperation programme of the WTO secretariat be made available to developing and, in particular, least-developed country members to facilitate their participation in the work of the WTO Working Group on the Interaction between Trade and Competition Policy (WGTCP), which was established by paragraph 20 of the Declaration. In addition, at the Seattle Ministerial Conference in November-December 1999, developing countries made known their desire for additional and more intensive assistance in the area of trade and competition policy, particularly through regional workshops and similar activities. In 2001, a number of activities were undertaken in support of these objectives, in most cases in cooperation with other intergovernmental organizations.

52. In February 2001, a WTO Regional Workshop "Competition Policy, Economic Development and the Multilateral Trading System: Overview of the Issues and Options for the Future" was held in Cape Town, South Africa, for the benefit of African WTO members and observers. The workshop was organized by the WTO secretariat in cooperation with the Government of South Africa and with financial support from the Government of the United Kingdom (Department for International Development). It examined a range of questions relating to the role of competition policy in developing economies, the needs of such countries with respect to technical assistance and other forms of cooperation, and the role that the multilateral trading system might play in supporting the implementation of effective national competition policies by developing country members. The workshop was attended by representatives of approximately 40 WTO member and observer countries from all parts of Africa and featured participation by prominent experts from competition agencies, universities and civil society organizations from within and outside the region as well as from other intergovernmental organizations including UNCTAD, COMESA and the OECD.

53. During the year, a representative of the WTO secretariat participated as a resource person in two regional meetings organized by the OECD as part of its Outreach programme for non-member organizations in the area of competition law and policy. In particular, the secretariat participated in regional/international meetings held in Brasilia (in cooperation with relevant authorities of the Government of Brazil) and in Seoul (in cooperation with the Fair Trade Commission for Korea). At these meetings, updates were provided to delegates on the ongoing exploratory work and state of play on competition policy in the WTO. During 2001, a representative of the secretariat co-authored (with the chairman of the WTO Working Group on the Interaction between Trade and Competition Policy) a paper for presentation at the "Integrated Framework Seminar on Mainstreaming Trade into Country Development Strategies: The Perspectives of Least-Developed Countries" (sponsored jointly by the WTO, UNCTAD, the

International Trade Centre, the International Monetary Fund, UNDP and the World Bank). The paper outlined the important links between competition policy, trade liberalization and regulatory reform as elements of national development strategies for developing and least-developed countries.

54. Emphasis was also placed on technical cooperation activities involving non-governmental organizations. In June 2001, a representative of the WTO secretariat participated in a workshop organized by the Consumers Association of the United Kingdom in cooperation with Consumers International. The workshop featured participation by a number of non-governmental organizations interested in issues concerning the interface of trade and competition policy, including Actionaid, Amnesty International, Christian Aid, the Consumer Unity and Trust Society (CUTS), Consumers International, Oxfam, and the World Development Movement. In October 2001, the secretariat participated in the International Symposium on Competition Policy and the Consumer Interest that took place in Geneva. This event was organized by the Consumer Unity and Trust Society and featured participation by a large number of non-governmental organizations as well as by representatives of national governments and intergovernmental organizations. In 2001, representatives of the secretariat also participated as instructors in (i) a University of Geneva Summer Course on issues relating to competition policy and the multilateral trading system, which was attended by a number of delegates from developing countries; and (ii) several sessions of the WTO Trade Policy Course for participants from various regions of the developing world. The secretariat also participated in two special sessions on competition policy and the multilateral trading system that were organized by the Centre for Applied Studies in International Negotiations (CASIN) in cooperation with UNCTAD for Geneva-based delegates of developing countries.

55. In 2002, an expanded programme of technical assistance on trade and competition policy will be undertaken, in cooperation with UNCTAD and other relevant intergovernmental organizations, in response to commitments contained in relevant paragraphs of the Doha Ministerial Declaration. Paragraph 24 of the Declaration recognizes "the needs of developing and least-developed countries for enhanced support for technical assistance and capacity-building in this area, including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development" and commits WTO members to respond to these needs, working in cooperation with other relevant intergovernmental organizations, including UNCTAD, and through appropriate regional and bilateral channels. In response to this direction, relevant activities will include a number of joint WTO-UNCTAD events such as regional workshops and a symposium for Geneva-based delegates.

B. Requests for technical assistance

56. This subsection contains extracts from the replies received, which are related to requests for technical assistance with identification of specific competition law and policy areas or issues which States wish to see receive emphasis.

Angola

57. Because Angola is a country negotiating a transition from a planned central economy to a market economy, it requires support in the following areas:

(a) Training facilities either through seminars or traineeships in order to enable improvement in the areas of competition law and policy;

(b) Access to the existing legislation on competition policy in other countries, specifically in Europe, in order to promote the improvement of Angola's competition law which is currently being drafted;

(c) Access to other countries' experiences in the regulation of competition as far as a regulatory mechanism's organizational requirements, structure and functioning are concerned;

(d) Direct support and advisory facilities aimed at promoting the organization and development of the country's economic activities.

Armenia

58. The State Commission on Protection of Economic Competition requests technical assistance that will bring its working and training conditions up to the required minimum standard so that after recruitment of staff with the required professional skills it can exercise its statutory competencies and functions. Technical assistance is needed mainly in the following forms:

(a) Consultancy and assistance in the field of law enforcement, market analysis and others;

(b) Advisory services by a resident adviser;

(c) Training;

(d) Establishment of a library;

(e) Procurement of equipment (including web-page design).

Iran

59. Technical assistance is requested in the following areas:

(a) Cooperation in the preparation of a study on restrictive business practices and their implications for the Iranian economy;

(b) Seminars or workshops to describe UNCTAD's Model Law for competition law and policy;

(c) Consultative assistance in order to adopt and amend competition-related laws and policies, considering the privatization and deregulation programmes;

(d) Seminars or workshops to familiarize Iranian officials with the experience of countries which have adopted competition law;

(e) Seminars or workshops on competition policy and intellectual property rights;

(f) Training courses for the staff members who will work in the authority responsible for the control of restrictive business practices;

(g) Seminars or workshops to review the implications of competition law and policy for SMEs.

Jamaica

60. The Fair Trade Commission (FTC) finds that, with the increasing liberalization of the telecommunications sector, technical assistance is becoming increasingly inadequate, and that there is a great need for training and technical assistance in this area. Even though the Fair Competition Act of Jamaica does not contain provisions addressing the area of mergers and acquisitions, it is conceivable that this situation could change in time. As it is widely known that investigating and prosecuting cartel activities requires specific expertise, and that there is much to learn from States which have relevant experience, the FTC welcomes assistance in this regard.

61. Given the necessary resources, the FTC would like to undertake the following projects:

(a) Capability building and service improvement, comprising the following activities:

(i) Organization of a course on competition in Jamaica;

(ii) Study visits to the Federal Trade Commission;

(iii) Occasional visits by consultants;

(iv) Attendance by Jamaican experts at international seminars;

(b) Development of telecommunications capabilities;

(c) Development of the FTC's web site and improvements in the FTC's database management;

(d) Creation of an international policy stance for the FTC;

(e) Assistance towards public education;

(f) Development of a library.

Kenya

62. The Monopolies and Prices Commission needs technical assistance which will enable it to do the following:

(a) Embark on skills development in the areas of competition law, economic and financial analysis, administrative and commercial law enforcement and statistical analysis and enhance the effective utilization of modem management information systems;

(b) Purchase equipment (computers, printers, etc.) and motor vehicles to facilitate research, on-the-job training and enforcement;

(c) Collaborate with established competition authorities, especially those in developed countries;

(d) Enlist consultants in the drafting of the law and train staff;

(e) Establish a documentation centre as a resource base for competition policy and law enforcement;

(f) Create a databank;

(g) Create a web site and acquire other information-technology-driven facilities;

(h) Create awareness of competition policy and law.

63. The implementation strategies for achieving the above aims may consist of:

(a) Training of competition policy law officials;

(b) Procurement of consultancy advisory services;

(c) Participation in regional and international competition policy and law events;

(d) Procurement of equipment, vehicles and information technology facilities;

(e) Procurement of reference materials;

(f) Establishment of advocacy programmes;

(g) Procurement of suitable office accommodation.

Madagascar

64. The technical assistance requested consists of:

(a) Technical assistance to raise awareness of and publicize the new law, which will be a major undertaking given the great differences in development between the regions;

(b) Training-of-trainers in competition law and policy;

(c) Technical assistance from an UNCTAD representative (adviser and observer) in setting up the Competition Council on the right lines and putting it swiftly into operation;

(d) Comprehensive documentation on the provisions in force in other countries in the area of competition policy and trade, including provisions on dumping, consumer protection, industrial property, unfair competition, price controls and businesses;

(e) The provision of a grant for Malagasy officials to attend a short course on competition law.

Malta

65. The Office of Fair Trading of the Consumer and Competition Division within Malta's Ministry for Economic Services is going to ask through the Technical Assistance Information Exchange Office (TAIEX) for an expert to review the draft of the Merger Control Regulations and is also going to recruit experts through the Twinning Light Project to help set up a Merger Task Force and to train officials in the legal and economic aspects of Merger Legislation.

Philippines

66. Technical assistance is required in the following forms:

(a) Access to other countries' experience in enhancing and enforcing comprehensive competition laws and policies;

(b) Strategic measures to refine and enhance approaches and measures for dealing with competition matters;

(c) Institution building for competition authorities;

(d) A case-study-based seminar for enhancing investigative techniques;

(e) Network building to sustain information sharing;

(f) Participation in bilateral and multilateral forums;

(g) Advice and training for regulatory agencies;

(h) Skills enhancement for members of the legislative, executive and judicial branches.

Tunisia

67. Technical assistance is desired in the following areas:

(a) Documentation: to develop the means to disseminate and publicize information and to produce leaflets and brochures, including assistance in drawing up guidelines for businesses;

(b) Strengthening of the human and material resources of competition bodies to ensure that promotion mechanisms and a competition culture become better established;

(c) Improving Tunisian officials' ability to take part in the forthcoming multilateral negotiations in WTO;

(d) Technical support in handling specific cases, particularly in the current context of globalization, as the growing number of cases affecting several countries makes cooperation between the authorities concerned imperative;

(e) Training in techniques for the investigation of anti-competitive practices and the ready availability of advice on the implementation of competition law and any changes that need to be made to it;

(f) The shortage of queries brought before the Competition Council since it was set up, largely owing to ignorance of competition law and the Council's role. The Council is aware of the situation and is intending to set up a wide-ranging programme to promote a competition culture by organizing seminars and workshops on competition and meetings with economic actors. It is also considering setting up a competition law association and disseminating its annual report more widely.

Viet Nam

68. It is important for Viet Nam to receive international assistance in order to complete the draft law on competition as scheduled. Viet Nam always greatly appreciates technical cooperation and assistance from other countries and international organizations, and expects to receive more of it in the future, especially in the following fields:

(a) Training and improving the skills of officials in charge of drafting and implementing the law on competition;

(b) Organizing international workshops with experts from other countries and international organizations in order to exchange experiences on drafting competition legislation;

(c) Financial assistance for studying and drafting law on competition and the establishment of an effective Competition Committee to implement this law in the future.

UEMOA

69. UEMOA, in anticipation of the adoption of its competition laws in the first half of 2002, has identified four key areas in its action plan for the implementation of its community regulations:

(a) Finalization of the institutional framework through the adoption of the implementing regulations. To achieve this, UEMOA needs reliable reference points, which it hopes to find in European Union legislation, which has been a source of great inspiration in the preparation of its draft regulations. What this means in practice is that European Commission experts, and possibly UNCTAD experts, would supply documentation and advice and study trips would be organized to familiarize officials of the UEMOA Commission with the way in which the European institutions operate;

(b) Capacity-building, by training officials from the Commission and its member States who are involved in the enforcement of community competition regulations. For this purpose, a series of seminars has been scheduled: one will be on European Union funding under its Regional Assistance Programme for Integration (RAPI 2). Support is also being sought from other organizations, including UNCTAD, with which the UEMOA Commission is currently working on the possibility of extending to other member States the TrainForTrade project designed for Mali, Burkina Faso and Benin;

(c) Sectoral studies to ensure that when the Commission begins to monitor and suppress anti-competitive practices in key sectors of the Union market, its actions are carefully planned. The terms of reference for these studies were finalized in the 2002 schedule for RAPI 2, which the European Union has undertaken to finance;

(d) Information, education and communication aimed at the private sector and civil society, to be delivered through seminars and the publication of documents publicizing community competition law. Three sources of funding and technical support for these activities have been targeted: they are the European Union, French international cooperation agencies and UNCTAD.

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THE RELATIONSHIP BETWEEN COMPETITION, COMPETITIVENESS AND DEVELOPMENT

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Executive summary

The relationship between competition, competitiveness and development is receiving increased attention in the light of globalization and its implications for sustained economic growth and welfare. Policy makers in both developed and developing countries worry about national competitiveness and how to achieve it. In this context, the issues note highlights the changing nature of competition and its implications for achieving and sustaining competitiveness, and discusses some of the issues and policy implications facing Governments as they wrestle with competitiveness concerns in a globalizing world economy. Among the main policy issues identified by the note is that the competitiveness of developing country firms (and by extension of developing countries) to integrate into the world economy depends to a large extent on their acquiring the necessary capabilities to apply available technologies and innovate, and on the domestic availability of competitive supporting infrastructure (including human and financial resources and services). This implies policy measures beyond trade liberalization to address (i) supply capacities at the systemic level; (ii) concentration of market power, which is both an outcome of global competition and a threat to global competition; and (iii) the consequent need for the strengthened application of competition principles.

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INTRODUCTION

1. Recent developments in the global economy, including mega mergers and the increased potential for cross-border anti-competitive practices, are of direct relevance to developing countries' growth and development and have implications for their integration into the world economy. Evidence from the experience of developing countries over the past decade suggests that insufficient attention to competition issues has, in some cases, negated whatever positive effects may have been gained from liberalization and privatization.

2. These issues, in the light of the fact that the gains from globalization have been slow to materialize in developing countries, have brought to the forefront the interface between competition, competitiveness and development.

3. In the light of the above considerations, the Intergovernmental Group of Experts on Competition Law and Policy at its last session requested the UNCTAD secretariat to prepare a study on the relationship between competition, competitiveness and development for consideration at its fourth session.

4. Economists are generally not in agreement as to the applicability of the concept of competitiveness to a country.[1] Competitiveness is most meaningful and uncontroversial when applied to the individual firm, which is the principal agent for building competitiveness. For the purposes of this note, the term "competitiveness" is used with reference to the firm.

5. The present note seeks to shed light on the complex and changing association between competition and competitiveness and its implications for development. In this context, section I reviews the theoretical underpinnings of the concept of competition and the sources of international competitiveness. Section II highlights some of the main impediments with respect to fostering international competitiveness in developing countries, section III looks at how competition law and policy addresses anti-competitive practices in a developing country, and section IV examines the role of foreign direct investment (FDI) and export promotion in facilitating competitiveness, as well as the experience of developing countries in fostering competitiveness. Section V summarizes the policy conclusions and implications arising from the discussions.

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[1] Definitions of national competitiveness place emphasis on maintaining and expanding domestic real incomes. The OECD defines competitiveness as "the ability of companies, industries, regions, nations or supranational regions to generate, while being and remaining exposed to international competition, relatively high factor income and factor employment levels on a sustainable basis". Similarly, Scott and Lodge (1985) define national competitiveness as the ability of nation States to produce, distribute and service goods in the international economy in competition with goods and services produced in other countries, and to do so in a way that earns a rising standard of living. However, Krugman (1994) dismisses national competitiveness as a meaningless expression when applied to national economies and Porter (1990) is of the opinion that the only meaningful concept of competitiveness at the national level is national productivity.

I. COMPETITION AND COMPETITIVENESS

6. In a market economy, firms compete with each other to win consumers. Competition provides an incentive for firms to perform at their best, producing high-quality goods and services at the cheapest price. Competition encourages entrepreneurial activity and market entry by new firms by rewarding efficient firms and sanctioning inefficient firms. In ideal market conditions firms react flexibly and quickly to changing market demands and the relentless entry of new firms. The entry of new firms provides the necessary stimulus for adjustment, while the ability of firms to adjust, and the speed at which they do so, are a measure of their efficiency and, by extension, their competitiveness. Competition is thus a key driver of competitiveness.

7. However, in most markets, market conditions rarely approximate the ideal as prescribed by economic theory. In reality many barriers exist which preclude markets from being truly competitive, thus hampering firms' adjustment to changing market conditions and preventing new firms from starting up. Such barriers may result from various information asymmetries between competing firms relating to the market and technology, regulation, scale economies and the use of anti-competitive practices by firms already in the market to expand their control over others or to stop others from entering the market.

8. In its widest sense, competition connotes the "survival of the fittest" and it can therefore be said that competition kills competition. In the face of increased competition and in the pursuit of larger profits, existing market players can be tempted to distort or eliminate competition in order to acquire and abuse market power. Consequently, policy interventions are necessary in order to maintain and encourage healthy competition. In recognition of this need, Governments in many countries implement a competition policy to maintain and encourage healthy competition, which includes laws and policies dealing with anti-competitive practices.

9. Globalization and liberalization, facilitated by rapid advances in technology, are creating new dynamics of competition and, in so doing, render the determinants of competitiveness much more complex. As already established in the preceding discussion, greater efficiency is the source of competitiveness. In the context of international trade, competitiveness is traditionally defined in terms of exchange rates, costs and prices. Nowadays a distinction is drawn between static competitiveness and dynamic competitiveness.[2] In the former, the emphasis is on price competition whereby firms compete on the basis of received endowments such as low-cost labour and natural resources. Under these circumstances, retaining competitiveness is dependent on maintaining or lowering production costs. This is the basis on which many developing country firms compete. Dynamic competitiveness is associated with the changing nature of competition, which places a premium not only on the relationship between costs and prices but also on firm-level ability to learn, rapidly adjust to new market conditions and innovate (where innovation is defined in

[2] Also referred to by Pyke and Sengenberger (1992) as the "low" and "high" roads to competitiveness.

the broadest terms and is not necessarily confined to radical technological innovation).[3] In this framework, competitiveness refers to the ability of firms to produce goods and services that stand the test of international competition, while upgrading technological capabilities.[4]

10. With globalization and liberalization, the boundaries between national and international markets have become blurred, traditional distinctions between national and international competitiveness thus becoming redundant. This blurring of boundaries has implications particularly for small and medium-sized enterprises (SMEs), which were previously insulated from international competition by national borders. A lack of finance and insufficient technological capabilities limit the ability of even firms that were domestically competitive prior to liberalization to respond to competition that cuts too quickly into their market share. In underdeveloped markets with few participants, technological learning can be extremely risky and expensive for the individual firm and is often not undertaken in the absence of supporting policies to facilitate their adjustment.

11. A notable feature of the changing nature of competition is a radical alteration in the organization of firms as well as the organization of production, marketing and distribution of goods and services at the international and national levels. In order to adapt and remain competitive firms are exploiting externalities or "knowledge spillovers" through inter-firm cooperation. Access to and possession of knowledge, in addition to technical hardware, has become an important asset for global producers. Networking and being part of a production network is an increasingly important way in which firms get to "know-what", "know-how", "know-why" and know-who" in their particular line of business. The importance of innovation, and its research and development costs, has given rise to the duality of cooperation and competition.

12. An increasingly significant form of inter-firm cooperation and coping mechanism utilized by firms in the face of the new competition is mergers and acquisitions. Globalization, capital market pressures, the evolution of technical infrastructure required to support networking and the advent of the Internet have precipitated global industry consolidation. Among the industries in which this trend towards consolidation is documented are banking and financial services, cigarettes, petroleum products, airlines, telecommunications, chemicals, sport shoes, beverages, automobile production and food services. According to a recent study on the phenomenon,[5] at the end of the various stages of consolidation, the three largest market participants will typically have captured 70–80 per cent of the market.

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[3] The term "innovation" as used here corresponds to that defined by Ernst, Ganiatsos and Mytelka (1998), whereby innovation refers not only to innovation at the frontier of technology but also to continuous and incremental changes carried out by firms in the course of organizing investment, creating production capacity, building and upgrading technological capabilities and generally learning to cope with changes.

[4] It is now well established that technology is more than just technical hardware. In the new mode of competition, technology encompasses developing company strategy and implies a certain degree of managerial skills and organizational and process-related capabilities which can lead to continuous improvements in the way that existing technologies and resources are employed, thus deriving dynamic gains from static comparative advantages.

[5] Transnational Corporations Observatory (2002). See also WIR (2000: chapter V).

13. Although high concentration does not necessarily equate with a lack of competition and need not have a negative impact on economic performance, it does facilitate the exercise of market power and anti-competitive behaviour.[6] The duality between cooperation and competition is not only a justification for countries to develop and enforce competition policies, but it also demands increased vigilance and sophistication on the part of competition policy enforcement authorities to ensure that cooperation does not lend itself to anti-competitive behaviour by merged or networked firms, care being taken at the same time not to stifle innovation and, in so doing, competition and competitiveness.

[6] The experience of countries such as Japan and the Asian newly industrializing economies would suggest that international competitiveness can be achieved in the presence of domestic market concentration.

II. COMPETITIVENESS CONSTRAINTS IN DEVELOPING COUNTRIES

14. There is growing evidence that anti-competitive practices both at the international and the national level hamper the competitiveness of firms in developing countries. According to DFID (2001), available evidence suggests that anti-competitive practices in the international arena are more prevalent and pervasive in developing countries and impair the process of development. This is because developing countries have to rely heavily on imports in view of their narrow domestic industrial base, and to the extent that their imports are subject to anti-competitive practices, local producers and consumers are penalized by higher than necessary import prices. Similarly, developing countries' exports to countries where anti-competitive practices may exist undermines their export growth. Firms can engage, and tend to engage, in cross-border anti-competitive behaviour with impunity, especially in countries that do not have domestic competition law, and developing countries are particularly vulnerable to these practices. The majority of them have not as yet developed competition laws and policies. Even those countries that have done so face a number of resource and skill constraints in enforcement.

15. At the international level, perhaps the most pernicious anti-competitive practices that may have knock-on effects in more than one industry or market, emanate from cartelization. As globalization has intensified competition, there is an apparent sharp increase in global cartel activity, or at least in its detection, in recent years. For example, the Office of Fair Trading (United Kingdom) is reported to uncover cartels at an average rate of one a month.[7] Estimates of global cartel activity rely on the results of government investigations in developed markets. It is very likely that some international cartels escape detection because of the paucity of information about, and prosecutions of, cartel activities in developing countries. According to Evenett et al. (2002), the United States and the European Union prosecuted at least 40 private international cartels during the 1990s. Developing countries are estimated to have imported goods worth between US$42.8 billion and US$81.1 billion in 1997 from industries that had had a price-fixing arrangement during the 1990s.[8] Analysis of the impact of these imports suggests that they represented a larger fraction of trade for the poorest developing countries and that the consumption impact is largest for upper-middle-income countries.

16. Levenstein and Suslow's (2001) survey of cross-section studies of private international cartels clearly underlines the duality between cooperation and competition. It demonstrates the variety of techniques available to cartels for blocking entry into their particular industry. Even in cases where entry into an industry is fairly easy and a large number of firms are in fact active, various relationships among producers, either as suppliers or customers, or as owners or partners in a joint venture, provide many opportunities for cooperation and may substantially lessen competition despite a large number of participants. The strategies generally fall into three categories: mergers, joint ventures and protective tariffs. It is important to note that mergers and joint ventures may well achieve both pro-competitive goals (e.g. sharing technology, access to capital) and competition-reducing ones

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[7] *Financial Times* (2002).
[8] Levenstein and Suslow (2001).

(e.g. the cartel accommodates new entrants on its own terms). Following the demise of the cartels studied, cartel participants entered into joint ventures with one another and with firms based in developing countries. This raises the question whether competition authorities are lax or wanting in their vigilance regarding former price-fixers. It also raises the question whether this laxity is in part due to their not having a mandate to act in the interests of third markets. There are a number of instances where United States and European competition authorities have uncovered evidence that private international cartels have affected developing country markets. However, this information could not be shared with these countries because of legal constraints (the majority of developing countries do not have competition-related cooperation agreements with either the United States or the European Union).

17. The above underlines the need for competition policy enforcement authorities to ensure that cooperation does not lend itself to anti-competitive behaviour by merged or networked firms, while at the same time not hindering innovation and thus competition and competitiveness. Moreover, it underlines the need for a case-by-case analysis of mergers and joint ventures. The use of protective tariffs through anti-dumping complaints by domestic producers is one tactic that authorities in developed countries are increasingly wary of. Recourse to anti-dumping action has also been observed in developing countries, notably against imports from other developing countries. This raises the question whether trade officials in developing countries are in a position, in every case, to take into account possible anti-competitive objectives behind domestic producers' anti-dumping suits – particularly where the country does not have a competition policy or competition authority.

18. The competitiveness of firms in developing countries is severely constrained by poor and inadequate economic infrastructure. The lack of technological infrastructure, in terms of knowledge-creating institutions and business development services, and problems with access to technology are major obstacles to firms' ability to innovate. Acquiring technological capabilities is not an automatic process in response to market signals. It is a costly and invariably time-consuming process very much dependent on country-specific factors that influence the ease and cost of the upgrading process and the time it will take. It can be prolonged and uncertain – particularly in developing countries, where firms tend to face widespread market and institutional failures.

19. Since new technology and ideas are at the heart of innovation, which is the key source of dynamic competitiveness, intellectual property becomes a primary asset of the firm and plays a major role in competitive strategy. By minimizing the risks associated with innovation and allowing innovators to amortize investments made in the research that led to their innovation, intellectual property protection provides a stimulus for creativity. However, it effectively grants limited monopoly rights in respect of technical elements that may be critical to the development, in the future, of products in a number of markets, and as a result can be a source of anti-competitive practices. For example, there is evidence that some of the cartels prosecuted by the United States and the European Union attempted to restrict information about technology. The expansion and strengthening of intellectual property protection in developed countries have taken place in tandem with the effective application of competition law to remedy anti-competitive practices. This has not been the case in many

developing countries, where competition law is non-existent or very weak in this respect. South Africa has had some success in this area, which illustrates how the application of competition policy may take into account intellectual property rights. For example, in evaluating the merger between Glaxo Wellcome PLC and SmithKline Beecham PLC in the pharmaceutical industry in South Africa, the South African Competition Commission considered the intellectual property rights held by these companies, and this resulted in orders for the divestiture or licensing out of some of those that were near expiration.[9] This raises the question whether and how the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights could be made to better accommodate developing countries' competition and development concerns as an increasing number of commentators (including the World Bank[10]) are advocating.

20. Developing country firms are furthermore disadvantaged not only by a lack of domestic suppliers but also by the means available to get their products to market. Numerous impediments prevent investments in technology, human resources and improvements in the efficiency with which resources are used throughout the economy. Moreover, competition in the transport and communications sector, the financial sector and the insurance sector, key supporting sectors for producers and exporters, is limited if not totally absent. They experience long delivery times, problems with financing, difficulties in managing risk and high transport and communication costs. These problems are compounded by a lack of skills in investment, production and marketing.

21. The lack of competition and the poor quality in supporting sectors limit the capability of domestic firms to adapt and meet the challenges of international competition. In particular, high transport costs feed into import and export prices. With increased competition forcing firms to adapt to just-in-time production and management systems, flexibility, speed and reliability regarding the delivery of goods have assumed significant strategic importance and are a key source of dynamic competitiveness. For instance, because of unreliable and infrequent transport services or the lack of third-party logistics providers who can efficiently handle small shipments, inventory holdings in the manufacturing sector in developing countries are two to five times higher than in the United States. It is estimated that cutting inventory levels in half could reduce unit costs (and free up scarce capital) of production by over 20 per cent.[11] Anti-cartel action by the European Commission in the shipping sector has led to reduced freight charges and better service on the transatlantic and Europe–Asia shipping routes, and to a lesser extent on the Europe–West Africa ones.[12] However, particularly for Africa, inland transport (rail/road) is by far the most expensive. Inadequate and poorly maintained secondary and tertiary transport networks undermine national efforts to engage in regional and international trade. Moreover, landlocked countries are at an acute disadvantage. For example, the price quotes for container shipments from Baltimore (United States) reveal that the cost of shipment to Durban (South Africa) is US$2,500, whereas the

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[9] UNCTAD (2002).
[10] World Bank (2002).
[11] World Bank (2002).
[12] Thin traffic densities have prevented freight charges from falling by as much as on the Europe–Asia routes.

cost of shipment to Mbabane (Swaziland) via Durban is US$12,000 – a landlocked "penalty" of 380 per cent.[13]

22. Clearly, issues related to competition explain many of the problems facing developing country firms in their pursuit of competitiveness. Even with regard to transport and communications positions, hauliers or multimodal transport service providers often have significant market power (often as a result of the small size of markets) in local markets and in many cases the State may be the only player. For example, complaints were made to the Venezuelan competition authority that Compañía Anónima Nacional de Telefonos de Venezuela (CANTV), which had a monopoly position in the provision of basic telecommunications services, was imposing discriminatory commercial conditions on other value-added services Internet providers relative to those granted to its own subsidiary. CANTV was duly instructed to offer similar commercial conditions to all Internet service providers, as well as to make available interconnection numbers to enable them to access local loops at the cost of a local telephone call. The role of competition law and policy is obvious in such cases. However, competition policy alone is not enough. Complementary policies to induce industrial restructuring, in addition to trade and investment liberalization, are necessary. Clearly, if firms are to meet the challenges of competition by identifying new opportunities, inducing innovations so as to effectively exploit these opportunities and minimize marketing and technology development costs through networking and forging ties with other firms, there is a need for a coherent policy environment which links macroeconomic and sectoral policies with firm-level efforts to attain and maintain competitiveness. More importantly, there is a need for a systemic approach to facilitating competitiveness.

[13] World Bank (2002).

III. HOW COMPETITION LAW AND POLICY ADDRESSES ANTI-COMPETITIVE PRACTICES IN A DEVELOPING COUNTRY AND ITS RELEVANCE TO DEVELOPMENT

23. Standard economic theory tells us that competitive forces work best and deliver the expected outcomes when there exists a market that is not overridden by distortions arising from market failure. As already illustrated in preceding sections, in most developing countries, local firms are constrained in their ability to respond to competition and the benefits of enhancing economic efficiency may not necessarily always be pro-competitiveness and pro-development. The existence of a free market system by itself is a necessary but not a sufficient precondition for national and international competitiveness. These inconveniences, and the current wave of globalization-induced mergers and acquisitions, which individually and collectively may have a negative impact on economic development, make it necessary more than ever for developing countries to have competition policies.

24. Anti-competitive practices tend to be less prevalent in economies where the effective use of national competition law and policy acts as a deterrent. Competition policy can protect producers and consumers from anti-competitive practices which raise costs and prices and reduce production, while at the same time promoting transparency and enhancing the attractiveness of an economy to foreign investment, and can also reinforce and maximize the benefits of such investment. Since competition policy and legislation is applied to all firms operating in the national economy, in addition to disciplining local firms it ensures that FDI does not bring with it restraint of trade or abuses of market power. An important part of competition policy is its advocacy function, which helps to impart a culture of competition in the manner in which firms interact in the economy and can in itself foster increased adherence to competition principles and encourage self-discipline amongst firms, thus reducing production and enforcement costs.

25. There is now a convergence of views on the fact that competition policy should take into account the stage of development and structure of an economy. Competition policy in developing countries should therefore be expected to emphasize dynamic as well as static efficiency as a major concern for economic development. Moreover, given that market concentration is likely be a significant problem in many cases, solutions will have to be sought to allow for an optimal degree of competition, and take due account of the need for coherence between broader developmental goals and pure efficiency goals. Hence, in developing countries competition policies tend to be defined in broad terms to include all national policies that are aimed directly at increasing competition in markets, including deregulation, privatization, international trade, FDI and intellectual property. The economic situation of many developing countries may dictate that broader social objectives be built into the goals of competition policy. For example, South African competition policy, which takes into account the issue of "black empowerment", is an illuminating case in point. Policy coherence between competition policy and industrial, trade and investment policies is also crucial. In some cases, countries encompass elements of industrial and investment policy within their competition policies in order to address issues of policy coherence. Thus, competition policy can be hostage to wider social considerations that may be of lesser

importance or excluded from competition policy objectives in more developed economies. This renders the implementation of competition law and policy a far more complicated balancing act in developing countries. The United Nations Set of Principles and Rules on Competition allows for the flexible application of competition law and policy in recognition of broader developmental goals.[14]

26. To be effective, competition law and policy in developing countries and economies in transition will require periodic amendments and improvements in the light of market development and evolution, as is the case in developed countries. For example, the Indian, Kenyan, Tanzanian and Thai competition laws are currently under review in the light of market developments and demands related to interpretation and enforcement concerns.

[14] See, in particular, paragraph 7, section C, of the Set.

IV. FACILITATING COMPETITIVENESS

The role of FDI

27. FDI is one means by which developing countries may cover shortfalls in domestic capital accumulation and gain access to technology, skills and managerial know-how. It can have positive benefits in terms of increasing the contestability of host markets, improving the performance of local industry and lowering prices. It may contribute directly to the competitiveness of local firms by being the vehicle by which they penetrate international production and marketing networks. The evidence would suggest that efficiency-seeking FDI rather than market-seeking or natural-resource-seeking FDI yields the greatest improvements in local firm competitiveness and market shares.[15] In this context, the need for local firms to incorporate themselves into international production systems, particularly those of manufactures involving high and intermediate levels of technology, is important. Singapore is perhaps the most celebrated case of technological upgrading via FDI and has achieved impressive export-led growth rates, ranking as the world's most competitive economy in 1995. By directing FDI inflows into higher-value-added, high-tech activities, Singapore rapidly evolved from assembly based on cheap labour to advanced automated manufacturing. In sub-Saharan Africa, Mauritius is probably the most notable case and has enjoyed considerable success in attracting FDI in manufactured products and altering the structure of its competitiveness. In the 1990s, the main recipient of FDI from the newly industrializing economies was China, now by far the largest exporter of clothing and other low-technology products amongst developing countries. Other important recipients of FDI in this group of economies were Bangladesh, Indonesia, Malaysia, the Philippines, Sri Lanka and Viet Nam. European transnational corporations (TNCs) have been an important driver of labour-intensive production in North Africa. TNC activity in medium and high technology is far more concentrated than in low-technology assembly. This concentration is a function of the local technological capabilities, with higher-technology FDI going to locations where local firm capabilities are better developed. In general, the evidence indicates that in countries that are technologically weak, the extent of technology transfer by TNCs is correspondingly weak. In these cases, TNC subcontracting of local firms is confined to relatively simple components, with little transfer of technology apart from assistance with quality control techniques and minor adaptations. Joint venture arrangements also tend to be in low-technology, low-value-adding manufacturing. Where the technological and absorptive capacity of the local firm has been high, experience shows that some transfers of product and process technologies of high precision and good quality to local subcontractors have occurred.[16] The main developing countries that have attracted FDI in these sectors in Asia are Malaysia, the Philippines, Singapore and Thailand, and Mexico and Costa Rica in Latin America.[17]

28. The realization of the potential benefits of FDI depends critically on the initial conditions in the local market. FDI cannot substitute for domestic effort. If there are no local

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[15] Mortimore and Peres (2001).
[16] UNCTAD (1999b).
[17] WIR (1999).

firms with which TNCs can interact, there can be no transfer of knowledge and technology and there are unlikely to be any changes to the host economy's dynamic competitive advantages. This suggests that achieving a more widespread diffusion of TNCs' technologies and creating interlinkages with local firms requires specific interventions (e.g. SME development, entrepreneurial skills development, support for R&D and the provision and upgrading of economic infrastructure) to promote local capacity development. There are large gaps in the competitive strength of foreign affiliates and local firms in the majority of cases and studies of FDI in developing countries tend to confirm that they often have market power in their respective industries and limit domestic firms to lower-value-added activities in the industry which are vulnerable to low-cost competition.[18]

29. FDI statistics suggest that mergers and acquisitions (M&As) contribute an increasing share of FDI. This makes it imperative for developing host countries to understand the forces driving M&As and the impact they have on development. Perhaps the most common concern about cross-border M&As is their impact on domestic competition.[19] The case of a merger in the beverages industry in Kenya contained in the recent compilation of competition cases in developing countries carried out by UNCTAD[20] illustrates how FDI can have effects on competition within national markets. Several complaints have been made to the competition authority in Kenya about the practices of the Kenyan subsidiary of Coca-Cola International. Kenya barred the combined efforts of the local Coca-Cola subsidiary and that of South Africa to strengthen and sustain Coca-Cola's dominance in the soft drinks market by taking direct control of production, marketing and supply of inputs in all domestic plants bottling its beverages.

The role of exports

30. Export growth can be an indicator of competitiveness. For successful East Asian economies, for example, a key inducement to effect the restructuring process and stimulate learning and international competitiveness was the exposure of domestic firms to international markets through export promotion. There is some evidence to suggest that export promotion (rather than import liberalization) may be the greatest source of dynamic competitiveness.[21]

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[18] This outcome is a result both of the specialization required by the new mode of competition and of the fact that when the technological capability gap between the foreign affiliate and local firms is too large the possibilities for performance-enhancing spillovers (i.e. technology transfer) are diminished.
[19] WIR (2000).
[20] UNCTAD (2002).
[21] Mytelka (1999).

Liberalization and dynamic competitiveness

The last 20 years have seen a remarkable expansion of manufactured exports from developing countries. In this group are some of the most populous countries in the world – China, India, Indonesia and Pakistan. At the same time there are a large number of countries whose entry into manufactured export trade has been limited and sporadic. All the sub-Saharan economies are in this group, as are most Latin American countries.

Countries which have had high growth rates for manufactured exports and which have therefore been defined as internationally competitive do not necessarily owe their competitiveness to technological factors. Countries with high export growth and low productivity – such as Mauritius and Sri Lanka – have focused their export development on sectors in which they have established strong static comparative advantages. Latin American countries show similar patterns, usually associated with natural-resource-based industrialization. Other countries, for example the Republic of Korea and Singapore, along with China, India, Indonesia, Malaysia, Pakistan and Thailand, may be described as being on a high productivity growth path and having dynamic comparative advantages.

Obviously, most countries, even the most technologically advanced, show features of both low and high productivity growth. However, the notion of distinctive growth paths reflects an important reality. The majority of developing countries that have not experienced export growth in a significant way show little sign of growth of productivity in manufacturing.

While a few developing countries have come to export a wide variety of products, most have concentrated on labour-intensive or natural-resource-based products, including low-technology inputs to the electronics industry. There is growing concern that such low-technology manufactures are beginning to acquire the features of primary commodities in world markets, facing a secular downward trend as well as the dilemma of fallacy of composition.[22]

The decline in the terms of trade of developing countries' manufactured exports since the mid-1980s shows how important it is, in pursuing policies of export diversification, to promote industries that have a scientific and technological content. The decline in the manufacturing terms of trade of developing countries was found to be largest for the least developed countries and smallest for the East Asian newly industrializing economies, indicating the key role of scientific and technological development in stimulating upward movement on the value ladder.

Source: Extracted from Cooper (1995) and TDR (1999).

31. Developing countries are among those that have benefited from improved export performance (see text box above). Much of this export success is a direct consequence of trade liberalization and the adoption of market-friendly reforms. However, one main concern is that most of these countries have not been able to reduce their dependence on exports of primary products. There is no conflict between exploiting static sources of comparative advantage (as developing countries have been doing quite well) and developing new, dynamic ones. Existing advantages can provide the means by which new advantages can be developed. Many developing countries appear to be having difficulty with the latter. Many of the reasons for their difficulty in capitalizing on their initial export successes have already been discussed. Markets and other institutions needed for the efficient functioning of a market economy were often missing or highly imperfect when these countries embarked on trade liberalization and adopted free-market-based principles. Insufficient attention to

[22] The fallacy of composition argument states that if a large number of developing countries pursue the same strategy (i.e. resource-based export promotion) simultaneously, any gains in volume under conditions of low elasticity of demand will be eroded by price declines. There is some evidence that the relative price of manufactured exports from developing countries has fallen over the last two decades alongside the rapid expansion of their volume. See TDR (1999: 133).

domestic competition issues has, in some cases, negated whatever positive effects may have been gained from liberalization and privatization. As noted above, in the international arena, anti-competitive practices can restrict access to markets for exports from developing countries and prevent them from developing further export capacity. In such conditions, initial weaknesses and asymmetries in supply capabilities are as likely to be reinforced as removed by closer integration into world markets. Firms may appear competitive in terms of their export performance as a result of currency devaluation, but this apparent competitiveness will not result in an economy's growth and development because currency devaluation reduces living standards by increasing costs of imports and worsening terms of trade. Countries whose comparative advantage is vested in low-wage unskilled labour can find themselves locked in a contest with other countries for footloose FDI.

V. POLICY IMPLICATIONS

32. From the above discussion, the positive interaction between competition, competitiveness and development seems to be indisputable. However, in the real world, and particularly in developing countries and economies in transition, the presence of market failures blunts the impact of competitive forces and leads to departures from the model of perfect competition. The perverse effect that market failures can have on competitive forces would seem to be particularly serious for dynamic competitiveness. Under dynamic competitive conditions the relationship between competition and competitiveness is much more complex.

33. In reality every economy, including the most developed, has firms that operate profitably and make a meaningful contribution to economic growth on the basis of static competitiveness. However, in recent years, not only has the scope of competition changed but also its nature, and an economy that is able to adjust to changing conditions is one that is characterized by a variety of different industries, some of which encompass a reasonable number of high-value jobs. With liberalization and globalization, firms compete not only on price but also on the basis of their ability to learn, adjust to market conditions and sustain a process of innovation.

34. In most developing countries, the conditions for perfect competition are far from being met and the benefits of enhanced economic efficiency do not necessarily always materialize. Developing countries should adopt an appropriate strategy of liberalization and integration into the global economy, taking proper account of the need to ensure the existence of conditions for workable competition in their economies and the determinants of sustained competitiveness in an increasingly knowledge-intensive world economy. A comprehensive approach to liberalization is needed in order to establish an enabling environment for firms to compete effectively, including the development of physical and technological infrastructure.

35. Competition law and policy is a vital tool for the achievement of systemic competitiveness in a globalizing world economy in which competition is characterized by a fierce struggle to be the next temporary monopolist (through technological innovation). Recognition that developing markets are fraught with market failures that could impede or dilute competitive forces and result in perverse outcomes to competition makes putting in place a policy framework for workable competition a necessity. A comprehensive approach to liberalization should encompass the establishment of complementary competition policy to ensure that instances of market power do not erode the competition and other benefits that result from liberalization. Consequently, when countries put in place a package of "competitiveness policies", competition policy should rank high alongside investment, industrial and trade policies.

36. There is a tendency in the current trends in global competition towards concentration of economic and market power. This tendency has increased the need for, and the importance of, competition policy in both developed and developing countries.

37. The fact that the new mode of competition requires firms (particularly in developing countries) to undergo a lengthy and costly process of learning and technological upgrading, and that abrupt liberalization may be counter-productive with regard to attaining international competitiveness, constitutes a compelling case for special and differential treatment for developing countries in matters regarding a possible multilateral framework on competition.

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